

Ronald L. Richman, SBN 139189
Joye Blanscett, SBN 191242
Bullivant Houser Bailey PC
601 California Street, Suite 1800
San Francisco, CA 94108
e-mail: ron.richman@bullivant.com
e-mail: joye.blanscett@bullivant.com
Telephone: (415) 352-2700
Facsimile: (415) 352-2701

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BOARD OF TRUSTEES OF THE CEMENT
MASONS HEALTH AND WELFARE TRUST
FUND FOR NORTHERN CALIFORNIA;
BOARD OF TRUSTEES OF THE CEMENT
MASONS VACATION-HOLIDAY TRUST
FUND FOR NORTHERN CALIFORNIA;
BOARD OF TRUSTEES OF THE CEMENT
MASONS PENSION TRUST FUND FOR
NORTHERN CALIFORNIA; and BOARD OF
TRUSTEES OF THE CEMENT MASONS
TRAINING TRUST FUND FOR NORTHERN
CALIFORNIA,

Plaintiffs,

vs.

NEIL JACKSON CONSTRUCTION, a
California company, formerly known as KM
JACKSON ENGINEERING, a California
company; and NEIL JEFFERY JACKSON, an
Individual,

Defendants.

BOARD OF TRUSTEES OF THE
LABORERS HEALTH AND WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA; BOARD OF TRUSTEES OF
THE LABORERS VACATION-HOLIDAY
TRUST FUND FOR NORTHERN
CALIFORNIA; BOARD OF TRUSTEES OF
THE LABORERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA; and
BOARD OF TRUSTEES OF THE
LABORERS TRAINING AND RETRAINING

Case No.: C 07 2842 BZ

**JOINT CASE MANAGEMENT
STATEMENT; PROPOSED ORDER**

Date: September 24, 2007
Time: 4:00 p.m.
Ctroom: G, 15th Floor

Case No.: C 07 2843 BZ

1 TRUST FUND FOR NORTHERN
2 CALIFORNIA,

3
4 Plaintiffs,

5 vs.

6 NEIL JACKSON CONSTRUCTION, a
7 California company, formerly known as KM
8 JACKSON ENGINEERING, a California
company; and NEIL JEFFERY JACKSON, an
Individual,

9 Defendants.

10 Plaintiffs Board of Trustees of The Cement Masons Health and Welfare Trust Fund for
11 Northern California; Board of Trustees of The Cement Masons Vacation-Holiday Trust Fund
12 for Northern California; Board of Trustees of The Cement Masons Pension Trust Fund for
13 Northern California; and Board of Trustees of The Cement Masons Training Trust Fund for
14 Northern California, ("Cement Masons Trust Funds") and Defendants Neil Jackson
15 Construction and Neil Jeffery Jackson met and conferred as required by Fed. R. Civ. P. 26(f)
16 and submit the following Joint Scheduling Conference Statement.
17
18

19 **DESCRIPTION OF THE CASE**

20 1. Brief description of the events underlying the action:

21 Plaintiffs allege that the Cement Masons' Master Agreement requires that employers
22 make contributions to the Cement Masons Trust Funds based on the hours that their respective
23 employees worked as laborers. Employers are to pay the employee fringe benefit contributions
24 on or before the 25th day of the month immediately succeeding the month in which the
25 employee's work was performed. Plaintiffs Cement Masons Trust Funds allege that Defendants
26 failed to pay all contributions due and owing for all hours worked by their covered employees.

27 Defendants deny Plaintiffs' allegations.
28

2. The principle factual issues which the parties dispute:

1. Whether defendant Neil Jeffery Jackson exercised authority or control over the payment of the employee fringe benefit contributions required to be made to the Cement Masons Trust Funds by Neil Jackson Construction such that defendant Neil Jeffery Jackson is a fiduciary as defined by ERISA.

2. Whether Defendants failed to timely pay all contributions owed to the Cement Masons Trust Funds as required by the applicable collective bargaining agreement.

3. Whether Defendants failed to report and pay all contributions owed to the Cement Masons Funds as required by the applicable collective bargaining agreement.

4. Whether Defendants failed to pay all contributions owed to the Cement Masons Trust Funds as reported by Defendants and as required by the applicable collective bargaining agreement.

5. The amount of fringe benefit contributions unpaid and owing, if any, to the Cement Masons Trust Funds by Defendants.

6. The amount of any liquidated damages and interest owing, if any, to the Cement Masons Trust Funds by Defendants.

3. The principle legal issues which the parties dispute:

1. Plaintiffs Cement Masons Trust Funds contend that in addition to the underlying delinquent fringe benefit contributions, Plaintiffs are entitled to liquidated damages and interest, attorneys' fees and an order compelling Defendants to submit to a further audit under ERISA, Section 502(g)(2), 29 U.S.C. § 1132(g)(2) which provides:

In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan –

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of –

i. interest on the unpaid contributions, or

ii. liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such percentage as

may be permitted under federal or state law) of the amount determined by the court under subparagraph (A).

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under § 6621 of the Internal Revenue Code of 1954.

2. Plaintiffs further allege that defendant Neil Jeffery Jackson exercised authority or control over the payment of the employee fringe benefit contributions required to be made to the Cement Masons Trust Funds by Neil Jackson Construction, that defendant Neil Jeffery Jackson is a fiduciary as defined by ERISA Section 3(21), 29 U.S.C. § 1002(21) and is therefore also a party in interest as defined by ERISA Section 3(14)(A), 29 U.S.C. § 1002(14)(A), that defendant Neil Jeffery Jackson's role in Neil Jackson Construction's failure to make the employee fringe benefit contributions that became due to the Trust Funds constituted a breach of his fiduciary duties and that therefore, Plaintiffs are authorized to seek relief against Neil Jeffery Jackson for this breach under ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2).

3. Defendant Neil Jeffery Jackson denies the forgoing allegations of the Plaintiffs.

4. The other factual issues which remain unresolved for the reasons stated below and how the parties propose to resolve those issues:

None.

5. The parties that have not been served and their reasons:

None.

6. The additional parties which the below-specified parties intend to join and the intended time frame for such joinder:

None.

7. The following parties consent to assignment of this case to a United States Magistrate Judge for court trial: Plaintiffs and Defendants

ALTERNATIVE DISPUTE RESOLUTION

8. The case was automatically assigned to Nonbinding Arbitration at filing and will be ready for the hearing by N/A.

The parties have filed a Stipulation and Proposed Order Selecting an ADR process:

Mediation

The parties filed a Notice of Need for ADR Phone Conference the phone conference was held on or is scheduled for N/A.

The parties have not filed a Stipulation and Proposed Order Selecting an ADR process and the ADR process that the parties jointly request [or a party separately requests] is

N/A.

9. Please indicate any other information regarding ADR process or deadline.

The parties are engage in informal settlement talks and may resolve this matter prior to ADR.

DISCLOSURE

10. The parties certify that they have made the following disclosures:

The parties have not made any formal disclosures as of this date but agree to make said disclosures by October 1, 2007 or as required by the Court.

DISCOVERY

The parties agree to discovery in compliance and with the limitations set forth in the Federal Rules of Civil Procedure.

Completion of All Discovery: April 18, 2008

Deadline for the hearing of
Dispositive motions (with standard
35-day notice): May 23, 2008

Completion of non-expert Discovery: March 14, 2008

Disclosure of Expert Witnesses: March 14, 2008

